

APPEAL NO. 041580
FILED AUGUST 23, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on June 7, 2004. The hearing officer determined that the respondent's (claimant) compensable (left shoulder sprain/strain) injury includes an injury to the left shoulder diagnosed as impingement syndrome, and partial rotator cuff tear, and that the claimant had disability from January 21 through March 31, 2004.

The appellant (self-insured referred to as the carrier) appeals, contending that the hearing officer erred in referring to the right shoulder, and that certain medical evidence indicates that the compensable injury was limited to a strain/sprain. The carrier also appeals the disability determination on the basis that the left shoulder surgery and recuperation time was for a nonwork-related condition. The file does not contain a response from the claimant.

DECISION

Affirmed as reformed.

The claimant was employed as an instructional aid and on _____, sustained a compensable injury when an aggressive second grader grabbed her left arm, and "laid on it." The claimant saw a doctor the next day and was diagnosed with a left shoulder sprain. The carrier accepted a left shoulder sprain/strain. There is conflicting evidence whether the claimant's shoulder got better or progressively worse. Undisputed is that the claimant continued to see a number of doctors. The hearing officer's Background Information summarized the medical evidence in some detail. A left shoulder MRI performed May 28, 2003, was negative except for some mild degenerative change. A physical therapy note of August 13, 2003, notes bruising on the claimant's left shoulder which the claimant testified was caused by the physical therapy. There was conflicting evidence regarding the cause of the bruising. The claimant eventually had left shoulder surgery on January 21, 2004 (paid for by the claimant's husband's health insurance). The preoperative diagnosis was left shoulder impingement syndrome and the post operative diagnosis was an incomplete rotator cuff tear.

At the beginning of the CCH the parties agreed that the only body part at issue was the left shoulder, consequently the reference to a right shoulder injury in the hearing officer's Conclusion of Law No. 3 and Decision is a clerical error. We reform those determinations to read the left shoulder.

Whether the claimant had improved from her injury or whether her condition had worsened and the circumstances of the physical therapy note about left shoulder

bruising were questions of fact for the hearing officer to resolve. The period of disability covered the left shoulder surgery and two months recuperation time.

The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the fact finder, the hearing officer was charged with the responsibility of resolving the conflicts and inconsistencies in the evidence and deciding what facts the evidence had established. This is equally true of medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). The hearing officer was acting within his province as the fact finder in resolving the conflicts and inconsistencies in the evidence in favor of the claimant. Nothing in our review of the record reveals that the challenged determinations are so against great weight of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986). Accordingly, no sound basis exists for us to disturb those determinations on appeal.

The hearing officer's decision and order are affirmed as reformed.

The true corporate name of the insurance carrier is **(a self-insured governmental entity)** and the name and address of its registered agent for service of process is

**SUPERINTENDENT
(ADDRESS)
(CITY), TEXAS (ZIP CODE).**

Thomas A. Knapp
Appeals Judge

CONCUR:

Chris Cowan
Appeals Judge

Edward Vilano
Appeals Judge